**THE HON'BLE SRI JUSTICE V.V.S.RAO**

WRIT PETITION No.23904 of 2006

**20.12.2006**

Between:

P.Laxman Rao @ P.Laxmaiah, S/o.Yellaiah

… Petitioner

AND

Ramaiah, S/o.Yellaiah

And others

… Respondents

**THE HON'BLE SRI JUSTICE V.V.S.RAO**

WRIT PETITION No.23904 of 2006

ORDER:

The petitioner is aggrieved by the order of the second respondent dated 25.9.2006 whereunder in exercise of powers under Section 9 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (the Act, for brevity), the second respondent set aside the order dated 29.12.2001 passed by the Mandal Revenue Officer (MRO), Kohir Mandal – fourth respondent herein; as well as the order dated 20.2.2004 passed by the Revenue Divisional Officer (RDO), Sangareddy – third respondent herein; in effect restoring the entries in the record of rights in favour of the first respondent.

The case of the petitioner is that his father P.Yellaiah @ Yelluga married Balamma in 1942, that the petitioner and two daughters were borne to them and that the daughters and Balamma also died. He claims to be sole successor to the property admeasuring Acs.5.13 guntas in survey No.128 situated at Gurrajuwada village fell to the share of P.Yellaiah @ Yelluga, father of the petitioner. He states that prior to her marriage with P.Yellaiah @ Yelluga, Balamma had two children through her first husband, namely, Yellaiah (another person). The first respondent and one Nagamma are the children. Though the first respondent has no right over the properties of P.Yellaiah @ Yelluga, taking advantage of absence of petitioner in the village, that the first respondent being Central Government employee managed the patwari and other revenue officials and incorporated his name in the revenue records fraudulently. The petitioner filed a suit being O.S.No.11 of 1999 before the Court of Junior Civil Judge, Zaheerabad, seeking declaration that he is the sole legal heir of deceased P.Yellaiah @ Yelluga. The same was decreed. Opposing that decree, fourth respondent issued order on 29.12.2001 effecting change in the record of rights incorporating the name of the petitioner as owner in

respect of Acs.5.13 guntas in survey No.128/B. This was also confirmed by the RDO by order dated 22.2.2004, aggrieved by which the first respondent filed a revision petition before the first respondent.

Learned Counsel for the petitioner submits that the first respondent has no right to get his name recorded in the record of rights as he cannot be treated as successor of P.Yellaiah @ Yelluga. **Per contra**, learned Counsel for first respondent submits that during the lifetime of P.Yellaiah @ Yelluga, the land was partitioned conveying an extent of Acs.2.27 guntas in survey No.128/B in favour of the first respondent. He also submits MRO and RDO erroneously ordered entries in favour of the petitioner ignoring the partition.

During the course of the submissions both the Counsel brought to the notice of this Court that the petitioner herein filed O.S.No.170 of 2004 on the file of the Court of the Junior Civil Judge, Zaheerabad, for declaration of title and possession, that the same was dismissed on 29.6.2005 for default and that the petitioner had already filed application under Order IX Rule 9 of Code of Civil Procedure, 1908 (CPC) seeking restoration of the suit. In view of this, it would not be proper for this Court to go into the question raised in the writ petition. Even under Section 8(2) of the Act, if any person is aggrieved as to any rights of which he is in possession by an entry made in record of rights, such a person may institute a suit against the person denying or interested to deny the title to such right and the entry in the record of rights shall be granted by the Civil Court as a declaratory decree. Therefore, the Civil Court has to decide the questions independently. In this writ petition, no relief can be granted.

The writ petition, with the above observations, is accordingly dismissed. No costs.

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December 20, 2006. (**V.V.S.RAO,J**)

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